

Application No. 10/781,138
Amendment After Final dated December 30, 2008
Final Office Action Mailed September 3, 2008

REMARKS

The Examiner has rejected claims 56-59 under 35 U.S.C. §112, second paragraph, for as being indefinite regarding the use of the terminology “at least one recess” in claim 56. Claim 56 is being amended as explained below.

Claim 64 has been rejected under 35 U.S.C. §102(b) as anticipated by Jacobs et al. U.S. Patent No. 5,636,736. This claim is being canceled.

Claims 65 and 66 have been rejected as dependent on rejected claim 64, but deemed otherwise allowable. These claims have been rewritten in independent form incorporating all of the limitations of claim 64.

Claims 38, 39, 46-49 and 56-66 have been allowed.

Applicants wish to thank the Examiner for the courtesy of discussing the rejection of claim 56 in a telephone call from Applicants’ counsel on December 19, 2008. In that discussion, Counsel stated Applicants’ intention to have claim 56 cover cavities defined by either a single recess or a plurality of recesses, but was unsure of whether the Examiner’s rejection was purely based on the indefiniteness of the claim or was rather related to the prior art. The Examiner reviewed the file history during the telephone discussion, noting that the predecessor to claim 56 had been rejected over Bozman U.S. Patent No. 5,757,028, but the Examiner was unable to determine during the discussion what the art required regarding claim 56. It was agreed that Applicants would submit an amendment, review the art in the record and state their position on the allowability of the claim. Issues remaining, if any, would be discussed after the Examiner had reviewed the submission.

Applicants have amended claim 56 to remove any indefiniteness by reciting that one or more recesses define the plurality of cavities. This is the broader of the two interpretations noted by the Examiner. The adjective “elongated” has been deleted and replaced with language stating that the cavities defined by the one or more recesses are in a single row.

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Applicants submit that limitations added to claim 56 were not included in the claims previously rejected, and that these distinguish the present claim over the art of record. Specifically, claim 56 calls for an elongated base having an upper surface with one or more recesses extending downwardly therefrom and defining a plurality of cavities arranged longitudinally in a single row. Each of the cavities is accessible through an upwardly facing opening and is dimensioned to receive and to snugly but releasably hold an orthodontic bracket. More importantly, claim 56 recites a plurality of substantially identical tooth-specific orthodontic brackets orthodontically designed for the same specific one of a patient's teeth, each bracket having a bonding base facing downwardly with the occlusal edges of the bases of each bracket facing in the same direction.

Bozman discloses a set-up tray that is filled by a technician with one bracket for each tooth of a patient when preparing the brackets for treatment of a patient. The tray of *Bozman* protects light curable adhesive applied by the technician until the bracket is applied to the patient by an orthodontist, typically within a day of loading the set up tray. Indicia on the tray identify the different brackets so that they can be matched with the correct teeth.

As noted in the previous response, claim 56 was an amended version of previously allowed claim 49, reciting more specific structure, but removing language not believed to have contributed to the allowability of claim 49. The Examiner had previously cited *Chester* for disclosing an orthodontic appliance package. Claim 56 claimed structural details that allowed Applicants' claimed package to function in the Applicants' system in a way that *Chester's* package could not.

It is submitted that claims 56-59, as amended, are definite and are patentable over the prior art. If, upon review of this response, the Examiner finds that issues remain, a telephone conference with the undersigned Counsel for Applicant is respectfully requested to discuss any further amendment necessary to place this application in condition for allowance.

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A one-month extension of time is submitted herewith. Payment of all charges due for this filing is made on the attached Electronic Fee Sheet. If any additional charges or credits are necessary to complete this communication, please apply them to Deposit Account No. 23-3000.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.

BY /Joseph R. Jordan/
Joseph R. Jordan, Reg. No. 25,686

2700 Carew Tower
Cincinnati, OH 45202
(513) 241-2324
(513) 241-6234 (Facsimile)